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SIPDIS

DEPT PASS TO USTR BENNETT HARMAN

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TAGS: [ETRD](#) [EINV](#) [ECON](#) [EC](#)

SUBJECT: ECUADOR'S WHITE GOODS POLICIES

REF: STATE 30500

1. Summary. In response to reftel, Emboffs met with newly appointed Vice Minister of Industries in the Ministry of Trade (MICIP) Jorge Illingworth and Ecuadorian Standards Institute (INEN) Director General Felipe Urresta to discuss white goods. Urresta had not, as he had offered to USTR, presented his proposal to the Special Committee to suspend the current practice that had prevented entry of certain US-produced white goods into Ecuador. Though he had on two occasions received copies of the US white paper on Ecuador standards and our request to provide a written response, he has not provided us with one. He did provide an oral response and requested a meeting with USTR and Embassy officials prior to the April 18-22 Lima round of FTA negotiations. Though the GOE claims it complies with its WTO commitments regarding technical trade barriers, its interpretation of compliance leaves plenty of room for doubt. End Summary.

White Paper Comments

2. Commercial and Econ officers recently met with newly appointed Vice Minister of Industries in the Ministry of Foreign Trade (MICIP) Jorge Illingworth and President of the Ecuadorian Standards Institute (INEN) Felipe Urresta to discuss the USG white paper provided in reftel. Urresta confirmed that he had received copies of the white paper from USTR and the Embassy on two separate occasions. He had not provided a copy of the white paper to the Special Committee8 referred to by Urresta and the white paper, which is the Comité Interinstitucional de Normalización, or Inter-institutional Standards Committee (CIN by its Spanish initials), but said he had discussed the salient points of the white paper with CIN.

3. Illingworth and Urresta said that the trade statistics they reviewed (from manifestos.com) do not indicate a significant drop in US white goods entering Ecuador. They said instead that the statistics indicated imports of white goods from other countries (especially Brazil, Italy and Colombia) were growing more rapidly than imports from the USA. Urresta also asserted that there is nothing new in Ecuador's procedures regarding white goods, claiming that the GOE is simply implementing its 1998 standards law.

4. According to Urresta, neither the INEN nor MICIP have ever rejected Underwriter Laboratories (UL) certifications. Urresta also claims that the GOE need not, under the WTO Technical Barriers to Trade Agreement, notify the WTO if the GOE is applying internationally recognized standards and processes, as is the case with white goods. He denied that the GOE was requiring new INEN-1 compliance certificates for superficial changes to white goods (e.g., new colors).

Urresta Takes No Action on His Offer to USTR

5. Urresta had also not discussed with CIN the offer that he had made to USTR's Suzanne Troje last October. We again reviewed the content of that offer for Illingworth's benefit. First, INEN would repeal the regulations and instructivos (described by Urresta as mandatory instructions designed to eliminate discretion when implementing regulations) that have prevented some US white goods from entering Ecuador. Second, the GOE would issue a formal notification of new regulations with a 90-day period to receive comments on the proposed regulations. Third, the GOE would arrange a transparent review of the comments received in response to the notice. Finally, the GOE would publish the new regulation, allowing six months for implementation before it took full effect. Urresta said he was willing to bring the proposal to CIN, but later offered an alternative to unblock the entry of US-made refrigerator freezers. He said the CIN could approve a modification to the regulations that would allow US origin refrigerators and freezers to enter Ecuador upon presentation of a UL 250 compliance certificate, a certificate of tropicalization8, and a certification that the equipment does not use CFCs. Urresta suggested that USTR and Embassy officials meet in Quito prior to the April 14-18 Lima FTA negotiations round.

Organizational Structure

16. The CIN and various technical committees are the principal bodies involved in standards and compliance policy. Established in 1998 by Executive Decree 1536, the CIN is responsible for publishing the list of goods that must comply with Ecuadorian norms and technical registrations. The CIN's duties include adding or removing products from the list of those that must comply with Ecuadorian regulations, recommending guidelines for the correct application of this law, recommending processes to harmonize national standards with international ones, and any other activity related to the contents of this decree.

17. The CIN published the first list of products subject to norms and technical regulations in 1999, with subsequent modifications in 2000, 2002 and 2003. In January 2003, by Executive Decree 3497, the GOE introduced the INEN-1 certificate, which certifies that a product complies with Ecuadorian technical regulations. The INEN-1 is valid for one year. The list of products was last modified in August 2003 by Acuerdo Interministerial 03420 (Registro Oficial 158) to include new types of gas ranges and refrigerators.

18. Executive Decree 3497 also defined who would serve on the CIN: the vice ministers of Industry and Foreign Trade of MICIP, one representative each from the chambers of commerce, industries and small industries and the Director General of INEN (currently Urresta). The latter is not a voting member of CIN, but in effect runs CIN agendas and meetings. INEN provides technical assistance to the CIN and the technical committees. Embassy sources indicate that INEN (through Urresta) manages and leads much of the standards work, leaving the CIN to rely upon INEN's technical expertise.

19. The technical committees are responsible for formulating new regulations, revising old ones and drafting instructivos. The instructivos, described above, also include information essential to a company wishing to import regulated products. However, Urresta asserts that the TBT agreement does not require publication of instructivos or public notices of changes in the instructivos. Nor are the instructivos published on the INEN website. They are also not published in the official register but take effect immediately upon adoption. Urresta claims that there is no need to notify the public of instructivos because they do not change laws or regulations, but merely implement them.

Current Process

10. MICIP (at the behest of INEN) initiates a new regulation or regulatory change when the INEN sends emails to specific stakeholders, reportedly by sending them to various chambers of industry, informing them of a proposed regulatory change. INEN does send out an electronic bulletin every three months, but it covers activities that occurred in the prior quarter. October 2004 was the last electronic bulletin posted on the INEN website. Though the website has links for additional information on numerous standards issues, there is no link for technical regulation notifications.

11. MICIP (again through INEN) convenes technical committees on specific topics. According to Urresta, one must be technically qualified to participate in these meetings. For example, in one case, invitations were sent to 27 individuals from local industry, chambers of commerce and industry, universities and other government officials. A technical committee was formed with 11 voting members, 1 representing a foreign manufacturer, 7 representing local manufacturers and their suppliers, and 1 each from a technical university, the college of mechanical engineers and MICIP. Interested parties may send comments to the technical committee, but the committee itself decides which comments are worthy of consideration. INEN representatives serve as the secretariat for the technical committees, producing draft language for review and discussion by the committees. Urresta resisted our suggestion to open the technical committee meetings to the public.

12. After six-eight months, the technical committee submits the to INEN's Board of Directors (the Consejo Directivo, or CD). The CD reviews the draft and generally forwards it to the CIN, who in turn passes it to the Minister of MICIP for approval. On those occasions when the CD suggests changes to the draft, it is returned to the technical committee to be modified and is then re-submitted to the CD. The CD sends the vetted draft through the CIN to the Minister, who signs the new regulation.

13. The GOE modified its notifications procedures in 2004. Once a regulation is adopted, the regulation is published in the official register and reported to the WTO by the MICIP inquiry point of contact.⁸ The WTO notification includes the address, phone number, fax and e-mail of the inquiry point of contact, but not the incumbent's name (currently

Arturo Barbosa of MICIP). The WTO notice does not provide direct access to new regulations or other related documents.

14. Urresta said that under the WTO TBT Agreement Ecuador was not required to state in its WTO notices where a new regulation could be obtained. Providing a point of contact for further inquiries was sufficient, he asserted. He also said that only comments from other governments (not private companies or individuals) would be accepted by the GOE during the 60-day WTO comment period. (Note: Andean Community countries (CAN)) Bolivia, Colombia, Ecuador, Peru and Venezuela) by agreement have 90 days under a CAN agreement.) Also, Urresta claims that Ecuador is not required under the WTO TBT Agreement to notify or publish regulations that are applying internationally recognized standards or procedures, which he cites is the case with white goods.

Proposed Quality Law

15. Illingworth told us that Ecuador does have a proposal for a new quality law that he helped to draft when he was Vice President of the Guayaquil Chamber of Industries. However, given the turmoil in the Ecuadorian Congress (a near permanent condition, made worse over the last several months), the new law will not be proposed to Congress in the immediate future. (Comment: We believe it unlikely that any serious structural reforms can be passed during the remainder of President Gutierrez's term in office, which expires in January 2007. End comment.) Urresta touts a 1999 World Bank project designed in part to restructure Ecuador's standards, testing and compliance agencies. However, the World Bank, for lack of GOE progress, withdrew the funding.

Comment

16. What is clear from our review of the Ecuadorian standards policy and compliance mechanisms is that INEN controls most of the process. The lack of notification to and participation by the public means that INEN can operate as the technical expert with little to no checks and balances, leaving considerable room for special interest interference. Even the technical committees are stacked in favor of local producers, thereby suggesting legitimacy to protectionist policies. INEN has said that the WTO requires all previous obligatory Ecuadorian technical standards to become voluntary within three years. Therefore, Ecuador will likely move to rewrite its technical standards as technical regulations. In February, for the first time, Ecuador notified two new technical regulations.

KENNEY